

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard J. Klein,)
Petitioner,) Case No. 1:01-CV-794
vs.)
Harold Carter,)
Respondent.)

Order Adopting Reports and Recommendations

This matter is before the Court upon objections to reports and recommendations issued on February 11, 2003, by United States Magistrate Judge Jack Sherman, Jr., and March 8, 2004, by United States Magistrate Judge David S. Perelman. The Court finds no merit in the objections to those reports and recommendations.

In the February 2003 report, Magistrate Judge Sherman recommended that Respondent's motion to dismiss Petitioner's petition for a writ of habeas corpus for failure to exhaust state remedies be denied. The Magistrate Judge noted that Petitioner had represented that all of the claims asserted in his amended petition were exhausted and that the record was devoid of evidence to the contrary. Respondent objected on the ground that three of Petitioner's claims, the fifth, tenth, and thirteenth in the amended petition had never been presented to the Ohio Supreme Court. In his response to Respondent's objection, Petitioner demonstrated that those claims were raised in the form of a

notice of appeal and memorandum in support of jurisdiction filed in the Ohio Supreme Court in September 2001 and denied by that court as not involving a substantial constitutional claim.

Having considered Respondent's objection in accordance with the *de novo* standard of review, the Court is persuaded that the Magistrate Judge's conclusion that the amended petition includes only exhausted claims is correct. Respondent's objection is **OVERRULED**. Petitioner's objections to the same report and recommendation are not well-taken and are also hereby **OVERRULED**.¹ The Court **ADOPTS** the Report and Recommendation in its entirety. Respondent's motion to dismiss (Doc. 10) is hereby **DENIED**.

Having objected to the February 2003 report and recommendation, Respondent chose not to file a return of writ until this Court ruled on his objection and, ultimately, his motion to dismiss. Petitioner moved for default judgment and sanctions on the basis of Respondent's failure to file a return of writ or otherwise respond to the petition. In the March 8, 2004, report and recommendation, Magistrate Judge Perelman recommended that Petitioner's motion be denied.

¹Two of Petitioner's objections, the first and second, are moot as a result of other rulings included in this Order. Petitioner's third objection relates to the production of a case file, a non-dispositive matter. The Court concludes that the Magistrate Judge's ruling in that regard was neither clearly erroneous nor contrary to law. See Fed. R. Civ. P. 72(a). Petitioner's fourth objection is really a request that Respondent stand silent in this action. As it is not an objection to any portion of the report and recommendation, the Court will not address the substance of that request in this Order.

Petitioner objects to that recommendation, and the Court has considered his objections in accordance with the *de novo* standard prescribed by Rule 72(b). The Court finds no merit in the objections, and they are hereby **OVERRULED**. The Court **ADOPTS** the report and recommendation in its entirety. Petitioner's motion for default judgment and for sanctions (Doc. 28) is hereby **DENIED**.

On June 10, 2003, this Court granted Petitioner's motion to strike his amended petition and to file a revised petition. The revised petition was entered in the docket in this matter on that date. The Court did not set a deadline for the filing of Respondent's return of writ. Having disposed of the objections to the February 2003 report and recommendation and denied Respondent's motion to dismiss for failure to exhaust state remedies, the Court hereby **ORDERS** Respondent to file his return of writ on or before May 21, 2004.

IT IS SO ORDERED.

/s/

Sandra S. Beckwith
United States District Judge